

Real Estate Regulatory Authority, Bihar

6th Floor, Bihar State Construction Corporation Building, Shastri Nagar, Patna-800023

Dated 31st August 2018

Before the Real Estate Regulatory Authority, Bihar, Patna.

Bench of R B Sinha, Member and Dr Subodh Kumar Sinha, Member

Complaint Case No. 06/2018

Dr Nawal Prakash DeepakComplainant

Vs.

Agrani Homes Real Marketing Pvt Ltd, Patna..... Respondent

The complainant filed his complaint on 15th May 2018 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 with the prayer for refund of his balance payment of Rs one lakh made to the respondent along with 18% interest. Accordingly, a copy of the complaint was sent to the Managing Director, Agrani Homes Real Marketing Pvt Ltd, Patna on 20th May 2018 for their response within 30 (thirty) days of the receipt of the notice. The respondent No.1 through their learned counsel Mrs Manisha Singh submitted their response on 20th June 2018 on the complaint by the complainant.

The hearing of the case was done on 27th July 2018.

Case of the Complainant :

Dr Nawal Prakash Deepak in his complaint has stated that he had booked Flat No.301, 3rd Floor, Block-F in Agrani Daffodils City to be constructed at Mauza Dhanaut, PS Rupaspur, District Patna, a project run by Agrani Homes Real Marketing Pvt Ltd, Patna, a company incorporated under the Companies Act, 1956.

The complainant has stated that he entered into a Memorandum of Understanding with the company after paying Rs 15 lakh as advance amount for the flat on 26th May 2016. The builder/promoter had promised to hand over possession of the flat within a period of 5 (five) years i.e. 60



months with relaxation/grace period of 6 (six) months after approval of the map by the Patna Municipal Corporation.

Dr Deepak further contended in his complaint that after observing and finding no progress in the construction work of the said Project even after lapse of one year from the signing of the Memorandum of Understanding, he requested the developer company through email regarding progress of the construction work in April 2017 but did not get any response from it.

He has also stated that no construction has been initiated in the project till now (May 2018). Since no response was received by him from the company, the complainant withdrew from the project on 14th July 2017 and requested for refund of the full amount of the payment made by him along with the due interest. The company however, refunded only Rs 13 lakh in between 23rd October 2017 to 09th November 2017. On further the legal notices, the Company refunded additional sum of Rs 1.00 lakh, thus making the total refund of Rs 14 lakh.

Dr Deepak has further stated that in spite of his two legal notices to the company, they have not yet refunded the balance amount of Rs one lakh.

He has, therefore, prayed for refund of the balance amount of Rs 1.00 lakh along with the interest @18 % on Rs 13 lakh for the period from May, 2016 to September, 2016 and the interest @18 % on remaining Rs one lakh from May, 2016 till actual realization of the amount.

Response of the Company (Developer/Promoter) :

In its response submitted through its learned counsel Ms Manisha Singh appearing on behalf of Agrani Homes Real Marketing Pvt Ltd, Patna, the company has confirmed the fact that a Memorandum of Understanding was signed on 26th May 2016 and the consumer withdrew from the project on 14th July 2017. She confirmed that the company has



already paid Rs 14 lakh to the complainant without deducting 5% of the payment made to the company.

The respondent has stated that in para-4 of the Memorandum of Understanding, it was clearly stated that the project would be completed within 66 (sixty six) months including the grace period of 6 (six) months after it gets formal approval of the Patna Municipal Corporation. It was further informed that the matter was pending with the Fire Department for their approval. After receipt of approval of the Fire Department, it will be submitted to the Patna Municipal Corporation for approval of the map as well as Department of forest and environment for environmental clearance.

Learned counsel has further stated that since the complainant had used abusive language with the officers of the company, the company decided to charge cancellation charges @ 5% of the deposit as stipulated in the Memorandum of Understanding.

The respondent has further stated that the interest, if any, required to be paid after 90 (ninety) days from 14/07/2017 as the Memorandum of Understanding provided that the refund would be made within 3 (three) months of the receipt of the request from the buyer.

The respondent has also stated that the buyer knew very well that no construction work could be started without getting approval of the competent authority. Accordingly, the respondent has requested for rejection of the complaint by the complainant as it did not have any merit.

Hearing date : 27th July 2018

In course of hearing, the Bench desired to know from the Senior Advocate Sri Ashok Singh whether the progress of the project was informed to the consumers/buyers through monthly/quarterly progress reports to which the learned counsel of the respondent company stated that it was not possible for the developer/promoter to keep the consumers/buyers informed of every decision or progress made in the project as they were very busy with the other administrative/project work.



During the hearing, the respondent also stated that the project was commenced before the RERA provisions came into effect and as such, the provisions of the Real Estate (Regulation & Development) Act, 2016 did not apply to the project per se. He further disclosed that the project was still going on and the plan has been submitted to the Fire Deptt for approval.

The Bench made it clear to the respondent that since the project though commenced earlier, was still going on after 01st May 2017 i.e. the date on which all sections of Real Estate (Regulation & Development) Act, 2016 became effective, this project was covered under the said Act and the jurisdiction of this Authority over this project was confirmed, to which Learned Senior Advocate graciously agreed.

The Bench also desired to know from the learned counsel of the respondent the normal time period within which approval of the map is generally received. The learned counsel stated that it was indefinite and not possible to give a fixed time frame. To this, the Bench stated that under such circumstances where approval of the map/plan of the project itself was uncertain and going to take indefinite time period, it was necessary for the respondent to state so in the MoU, which was not done. As a matter of fact, the complainant had claimed in its email to the respondent that they had been told at the time of taking advance for booking that the map of the Project was under approval and construction work would start within two months, which proved to be incorrect. The respondent did not contest on this issue.

Order

The Bench felt that since there was no visible progress in the project to the consumers/buyers and there was no response from the builder/promoter/developer to the emails of the buyer, the response of the buyer in such a situation to withdraw from the project is a reasonable and justified behavior. Further, building maps are generally approved for three years only. However, the MoU provided for completion of construction in



five and half years (sixty six months). In spite of that, even maps had not been submitted to competent authority for approval, in two years, which indicate a carefree attitude on behalf of the builder/promoter. It is, therefore, ordered that deposits made by the complainant need to be refunded back in full as the builder/promoter was not able to even commence the project or keep the buyers/consumers informed of the progress made in the project even after one year of entering into the Memorandum of Understanding.

As regards the interest, while the complainant has requested for refund of balance amount of the principal with 18% rate of interest, the builder/promoter has contended that no interest should be payable to the buyer until after completion of three months from the date of withdrawal by the complainant. Equity demands that a reasonable rate of interest should be paid to the buyer as the builder/promoter has availed the benefit of the deposit made by the buyer for more than a year and has been found to be negligent in commencing the project/keeping the buyer informed of the progress of the project. Therefore, the rate of interest of MCLR of SBI plus 2% on the deposit amount (Rs 13 Lakh) should be paid from the date of receipt of the fund by the builder/promoter till September, 2016, the rate of interest of MCLR of SBI plus 2% on Rs one lakh deposit from May, 2016 till March 2018 and the rate of interest of MCLR of SBI plus 2% on Rs one lakh deposit from May, 2016 till actual realization of the amount.

Date - 31/8/2018


R B Sinha, Member



Dr S K Sinha, Member
